

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

BLUE HILLS OFFICE PARK LLC,
Plaintiff,
Defendant-in-
Counterclaim,

v.

J.P. MORGAN CHASE BANK,
as Trustee for the Registered Holders of Credit
Suisse First Boston Mortgage Securities Corp.,
Commercial Mortgage Pass-Through Certificates,
Series 1999-C1, and CSFB 1999-C1 ROYALL
STREET, LLC,

Defendants,
Plaintiffs-in-
Counterclaim,

v.

WILLIAM LANGELIER and
GERALD FINEBERG,
Defendants-in-
Counterclaim.

CIVIL ACTION
NO. 05-10506-WGY

**LENDER'S RESPONSE TO COURT ORDER TO PRODUCE DOCUMENTS
THAT DEMONSTRATE ACTUAL ATTORNEYS' FEES PAID**

The Lender¹ submits this memorandum in response to the Court's December 7, 2006, Order that the Lender produce documents that demonstrate actual attorneys' fees it has paid [dckt. no. 186] (the "Order"). The documents are attached to two affidavits submitted by the Lender today. The documents demonstrate that the Lender has actually paid all \$2,056,566.01 of

¹ Defendants and Plaintiffs-in-Counterclaim J.P. Morgan Chase Bank, as Trustee for the Registered Holders of Credit Suisse First Boston Mortgage Securities Corp., Commercial Mortgage Pass-Through Certificates, Series 1999-C1 (the "Trustee") and CSFB 1999-C1 Royall Street, LLC ("CSFB") are referred to collectively herein as the "Lender."

attorneys' fees and expenses requested in the Petition for Attorneys' Fees and Expenses of Defendants and Plaintiffs-in-Counterclaim J.P. Morgan Chase Bank, as Trustee, and CSFB 1999-C1 Royall Street, LLC, filed October 27, 2006 (the "Fee Petition").

The first affidavit is from Joseph A. Polcari, Jr., the LNR asset manager for the Blue Hills loan who testified at the trial of this action. His affidavit includes copies of checks or records of outgoing wire transfers by which the Lender paid in full the twenty-seven invoices of DLA Piper US LLP ("DLA Piper") and the Lender's expert witnesses that are included in the Fee Petition.

To complement the documents attached to the Polcari Affidavit, the Lender also submits the affidavit of Susan Scheeler, a Collections Manager in the Accounting Department of DLA Piper. Her affidavit attaches printouts from DLA Piper's accounting system showing the dates and amounts of the payments received from the Lender for the DLA Piper invoices included in the Fee Petition, along with a one-page summary of those printouts.

With limited exceptions for certain of the combined payments noted below, the documents attached to the Polcari and Scheeler Affidavits (the "Payment Records") are presented in the same order that the invoices are summarized on Exhibit E and attached as Exhibits D and G to the Affidavit of Bruce Falby, Esq., in Support of Petition for Attorneys' Fees and Expenses, dated October 27, 2006 (the "Falby Affidavit"). To aid the Court in synthesizing the Payment Records with the materials attached to the Falby Affidavit, the Lender makes the following points:

- 1) As noted in the Fee Petition, for certain of the DLA Piper invoices the Lender is not seeking from the Blue Hills Parties the full amount that was billed to it by DLA Piper. Accordingly, the Payment Records for those invoices show payments in excess of the amounts

included in the Fee Petition. The amounts Lender seeks in the Fee Petition are set forth on Exhibit E to the Falby Affidavit.

2) The sequence of invoices listed on Scheeler Affidavit Exhibit B, which includes both DLA Piper invoice numbers and dates, corresponds to the sequence of Falby Affidavit Exhibit E, which omitted the invoice numbers.

3) As reflected by the Payment Records, certain of the DLA Piper and expert witness invoices were combined for payment by the Lender. Specifically,

- a. The DLA Piper invoices dated July 12, 2005 (\$18,611.19) and October 31, 2005 (\$26,804.15) were paid in full (along with other invoices not related to Blue Hills Office Park) by a single check dated December 15, 2005 in the amount of \$71,129.56. The invoice numbers are referred to on the documents for that payment that are part of Polcari Affidavit Exhibit A.
- b. The DLA Piper invoices dated August 31, 2005 (\$36,717.81) and November 30, 2005 (\$43,396.25) were paid in full by a single check dated December 16, 2005 in the amount of \$80,114.06. The invoice numbers are referred to on the documents for that payment that are part of Polcari Affidavit Exhibit A.
- c. The DLA Piper invoices dated April 19, 2006 (\$215,943.40) and June 5, 2006 (\$194,342.78) were paid in full by a single wire transfer made on August 8, 2006 in the amount of \$410,286.18. The separate invoice amounts are referred to on an incoming wire confirmation from Wells Fargo to LNR dated August 2, 2006, and included in Polcari Affidavit Exhibit A.
- d. The DLA Piper invoices dated October 9, 2006 (\$323,780.79) and October 26, 2006 (\$150,117.21) were paid in full (along with a later invoice not

included in the Fee Petition) by a single wire transfer dated December 15, 2006 in the amount of \$550,446.80. The invoice numbers are referred to in the wire confirmation that is part of Polcari Affidavit Exhibit A.

- e. The FTI Consulting, Inc., invoices dated July 20, 2006 (\$24,471.07) and October 18, 2006 (\$33,019.96) were paid in full by a single wire transfer made on December 15, 2006 in the amount of \$57,491.03. The FTI invoice numbers are referred to in the wire confirmation that is part of Polcari Affidavit Exhibit C.

CONCLUSION

For the reasons stated above and in its prior submissions, the Lender requests an award of \$2,056,566.01 in attorneys' fees and litigation expenses actually paid. The Lender requests that this amount be part of the judgment entered jointly and severally against Blue Hills Office Park, LLC, Gerald Fineberg, and William Langelier.

Respectfully submitted,

CSFB 1999-C1 ROYALL STREET, LLC,
and J.P. MORGAN CHASE BANK, as
Trustee for the Registered Holders of Credit
Suisse First Boston Mortgage Securities
Corp., Commercial Mortgage Pass-Through
Certificates, Series 1999-C1,

By their attorneys,

/s/ Bruce E. Falby

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